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December 11, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 00-251
In the Matter of Petition of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. for Arbitration of an Interconnection Agreement With Verizon Virginia, Inc. Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996

Dear Ms. Salas:

Enclosed for filing on behalf of AT&T and its affiliates listed above, please find an original and 3 copies of AT&T's Reply Brief on Non-Cost Issues.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to call.

Sincerely yours,

Mark A. Keffer

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
Petition of AT&T Communications	)	
of Virginia, Inc., Pursuant	)	
to Section 252(e)(5) of the	)	
Communications Act, for Preemption	)	**CC Docket No. 00-251**
of the Jurisdiction of the Virginia	)	
State Corporation Commission	)	
Regarding Interconnection Disputes	)	
with Verizon Virginia, Inc.	)	

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AT&T'S REPLY BRIEF REGARDING ARBITRATION OF ITS INTERCONNECTION AGREEMENT WITH VERIZON VIRGINIA, INC.[1]

Not that the Commission needs a reminder, but its decision in this arbitration is of paramount importance to the future of telecommunications competition, not just with regard to AT&T's interconnection and interrelationship with Verizon in Virginia, but for CLECs across the country. It is no overstatement that the results of this arbitration may very well dictate the legacy of the Telecommunications Act, because other states are certain to use the Commission's arbitration decision as a template for their own. Given the pace of CLEC failures in recent months, this proceeding is the last best chance to get telecommunications competition on the track Congress intended. Adoption of the positions set forth below and in AT&T's initial brief will do just that.

NETWORK ARCHITECTURE ISSUES

Issue I.1 *Point of Interconnection* Should each Party be financially responsible for all of the costs associated with its originating traffic that terminates on the other Parties' network; regardless of the location and/or number of points of interconnection, as long as there is at least one Point of Interconnection per LATA?

I. Verizon has failed to demonstrate that its VGRIP proposal is consistent with the law or public policy relating to the promotion of competition. [Issue I-1]

Verizon claims that the CLECs' proposals on this issue transfer virtually all of the costs of interconnection to Verizon, resulting in an inappropriate subsidy to the CLECs.[2] It further argues that its IP and related VGRIP proposal equitably allocate the costs it alleges are "caused" by AT&T's proposals, promote efficient interconnection, and are consistent with the law.[3] Verizon is wrong on all counts.

First, there is no subsidy, inappropriate or otherwise, inherent in AT&T's proposal. AT&T's proposal provides that each party is financially responsible for transporting its own originating traffic to the POI on the terminating party's network and paying for any transport and termination used to complete the traffic. These obligations are mutual and AT&T has demonstrated that its proposal is consistent with the law and public policy.[4]

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1 This Brief is presented on behalf of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. (together, "AT&T").

2 Verizon Initial Brief at NA-4.

3 *Id.* at 5, 8-10.

4 AT&T Initial Brief at 24-25.

Second, Verizon's complaints relating to the additional costs that it claims it must bear as a result of the CLEC proposals are misleading in several respects. Verizon may in fact pay incrementally more to transport its traffic to other carriers in the post monopoly era. However, the Act does not guarantee that ILECs will be of any increased costs as a result of competition. Opening markets to competition imposes additional cost on *all* carriers (often referred to as "competition onset costs").

Verizon has presented absolutely no evidence on the extent of these increased costs it claims are produced by the AT&T's proposals, nor did it see fit to make any effort to quantify them. AT&T, however was able to quantify the effect of AT&T's proposal on Verizon, and the results indicated the per line costs to Verizon are *de minimis*.[5] Verizon presented no testimony to contradict AT&T's calculations in this regard. .

Third, Verizon is just plain wrong that its proposals somehow promote efficient interconnection cannot.[6] Verizon's VGRIP and related IP proposal severely limit

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5 *See* AT&T Initial Brief at 23. As noted in AT&T's brief, the estimate of Verizon's costs are also conservative since the study assumes Verizon incurs transport costs at access rates. *Id.* A more precise estimate of Verizon's costs would be to use UNEs rates - which in Virginia are approximately 40-% of access rates. AT&T Exh. 3; Attachment Exh. DLT-7.

6 Despite Verizon's failure to identify or quantify any incremental costs associated with the CLEC's proposals, it nevertheless claims that its VGRIP proposal promotes economic efficiency by allocating incremental interconnection costs to the CLECs. Verizon Initial Brief at NA-10. As AT&T has demonstrated, Verizon's proposal does not allocate incremental interconnection costs. Instead, it allocates the preponderance of its origination and termination costs to the CLECs. AT&T Initial Brief at 17, 23. AT&T presented a cost study that estimated the costs imposed on AT&T by Verizon's proposal. The cost iteration, entitled the Verizon GRIP proposal (which in fact represents what Verizon calls its VGRIP proposal) assumed that Verizon would deliver its traffic to its end offices serving the calling party. *See* AT&T Exh. 3 at 41. Verizon suggests in its brief that under its VGRIP proposal the typical case would be to have Verizon deliver its traffic to its tandem. Verizon Initial Brief at NA-9. However, there is absolutely no evidence on the record to suggest that would be true in the majority of the cases. On the contrary, AT&T has pointed out in its brief that given Verizon's various provisions requiring the establishment of an AT&T IP at a Verizon end office, Verizon's transport offset proposal and Verizon's complaints regarding tandem exhaust, it is more likely than not that AT&T will have the responsibility to pick up Verizon's traffic at Verizon's end offices. AT&T Initial Brief at 16 and 23.

AT&T's ability to choose to deliver its traffic to an efficient point by imposing a myriad of restrictions on where and how AT&T can deliver its traffic.[7] These restrictions would not only result in the transfer of significant costs to AT&T, they also would compromise the efficiency of AT&T's network architecture by effectively forcing AT&T into inefficient Verizon look-alike arrangements.[8] Forcing such look alike arrangements would undercut one of the benefits of competition, *e.g.,* to produce lower costs, introduce innovative services and provide differentiated levels of quality.

Finally, Verizon's proposal is not consistent with the law. AT&T's Initial Brief describes how Verizon's proposal violates the Act's basic interconnection principles (1) by enabling Verizon, rather than AT&T to select the locations where traffic is delivered for termination for both its traffic and for AT&T's traffic; and (2) by transferring a substantial amount of its origination and termination costs to AT&T.[9] Verizon has not refuted AT&T's legal arguments, nor can it.

Verizon attempts to support its proposal by relying on unrelated sections of the FCC's *Local Competition Order* and Act. For example, Verizon asserts that ¶¶ 199 and 209 of the *Local Competition Order* stand for the proposition that CLECs are responsible to pay Verizon for any originating transport costs that Verizon must incur because of the CLEC's interconnection choices.[10] However, neither of these paragraphs relate to a

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7 AT&T Initial Brief at 15, n.35 and at 19.

8 As set forth in its initial brief the effect of Verizon proposal on AT&T would increase AT&T's local interconnection costs anywhere from $6,414,000 to $10,749 000 for the term of the ICA. AT&T Initial Brief at 23. *See also* AT&T Initial Brief at 21-22, 24-25 for descriptions of the additional inefficiencies imposed by Verizon's proposal.

9 AT&T Initial Brief at 12-24.

10 Verizon Initial Brief at NA-8–10.

carrier's obligation to be financially responsible for its originating transport costs.[11] Rather, ¶¶ 199 and 209, both relate to interconnection-specific costs.[12]

The portion of ¶ 199 Verizon cites states that a CLEC that desires technically feasible but expensive interconnection would, pursuant to § 252(d)(1), be required to bear the cost of that interconnection. But this paragraph deals with the *physical linking* of two networks, not the location of where that linking is to occur. In this same paragraph, the Commission notes how Congress intended to obligate ILECs to accommodate new entrants' interconnection requests by accepting novel uses of and modification to its network equipment to accommodate the CLEC. It is this type of extra interconnection cost—not originating transport cost—that is referred to in this paragraph.

Paragraph 209, as well, is related to the reimbursement of interconnection (*i.e.*, terminating and transport) costs and *not* to the obligation of the originating carrier to transport its calls to the POI. This paragraph, which is part of a discussion of *technically feasible interconnection points*, acknowledges that a particular *technically feasible point* could impose additional interconnection costs on the ILEC. It was meant to make the general point that the economic self-interest of the interconnecting carrier will cause it to choose the most efficient point of interconnection.[13] It does not support Verizon's argument here.

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11 A carrier's originating transport obligation was recently addressed by the FCC in its *Intercarrier Compensation NPRM*, at ¶ 70 in which it confirmed without exception that the current rules require the originating carrier to bear the costs of transporting traffic to its point of interconnection with the other carrier.

12 *See* Section XI of the *Local Competition Order,* which addresses the originating carrier's transport obligations.

13 Verizon also cites *MCI Telecommunications Corp v. Bell Atlantic Pennsylvania,* No. 00-2257 and 00-2258, 200, 2001 U.S. App. WL 1381590 at 21 (3rd Cir. Nov 2, 2001), a recent Third Circuit decision, in support of its VGRIP proposal. Verizon Initial Brief at NA 4. However, far from supporting Verizon's position, the 3rd Circuit's decision makes clear that, under the Act, it is the

Verizon also argues that VGRIP is consistent with the reciprocal compensation provisions in §§ 251(b)(5) and 252(d)(2)(A), and that AT&T's proposal is not consistent with these provisions.[14] Specifically, Verizon claims that its VGRIP proposal provides for mutual recovery of costs, while the CLECs' agreements violate the reciprocal compensation requirements because they impose on Verizon greater transport obligations than the transport obligations imposed on the CLECs.[15] While it is difficult to believe that Verizon would lack a basic understanding of the principles of reciprocal compensation; it nevertheless appears from these arguments that Verizon is confusing an originating carrier's origination obligations (the obligation to transport its traffic to the POI), with an originating carrier's obligation to pay the terminating carrier transport and termination costs. The mutual and reciprocal language in § 252(d)(2)(A) of the Act relates to the latter – the requirement that reciprocal compensation terms and conditions provide for mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network of calls that originate on the network of the other carrier. The obligation to pay the terminating carrier transport for reciprocal compensation purposes begins at the POI and goes to the terminating carrier's switch that

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CLEC, and not the incumbent, that selects the point of interconnection. As the Court held, a state commission and the incumbent LEC "cannot require [a CLEC] to interconnect at any point in the network at which [the CLEC] does not wish to interconnect. The decision where to interconnect and where not to interconnect, must be left to [the CLEC], subject only to concerns of technical feasibility" 2001 WL 1381590 at 16. Verizon's proposal would therefore violate the Act. Although the Court did state, citing ¶ 209 of the *Local Competition Order*, that if WorldCom's decision on interconnection points proves "more expensive to Verizon" the PUC should consider shifting costs to WorldCom, this dictum reference to what a state commission might do in a future proceeding does not support Verizon's proposal to transfer the preponderance of its origination and termination costs to AT&T. Moreover, as indicated above, ¶ 209 of the *Local Competition Order* relates to a carrier's obligations to reimburse the ILEC for any additional incremental interconnection-related costs – not an obligation to reimburse the ILEC for a substantial portion of its originating or terminating transport costs associated with its originating traffic.

14 Verizon Initial Brief at NA-10-12.

15 *Id.* at 12.

serves the called party.[16] Thus, reciprocal compensation requirements do not impose on each party mirrored "transport obligations" for delivering their traffic *to the POI*, as Verizon appears to be suggesting. Instead, the reciprocal compensation regulations require that each party compensate the other for the cost of terminating originating traffic delivered *from the POI* to the called party.[17]

The state commission decisions Verizon cites in support of its VGRIP proposal are, in fact, no help to Verizon at all. The recent New York Arbitration decision cited by Verizon on page 15 of its brief actually supports AT&T's position on this issue and *not* Verizon's.[18] There the New York PSC affirmed its earlier network interconnection policy and ordered that its existing framework remain in place that makes each party responsible for the costs associated with the traffic that their respective customers originate until it reaches the point of interconnection.[19] The two Sprint arbitrations cited by Verizon have no precedential weight, either. Both simply approve negotiated ompromises and thus do not amount to strong precedent on the issue. And while the South and North Carolina arbitration decisions which Verizon cites[20] do not require the ILEC to bear all of its costs for its originating traffic, both of these decisions disregard

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16 AT&T Initial Brief at 5.

17 AT&T's proposal is entirely consistent with these reciprocal compensation obligations. *See* AT&T Initial Brief at 24. Verizon's proposed transport offset, however, violates the reciprocal compensation requirements set forth in §252(d)(2)(A) of the Act because under certain circumstances it reduces the amounts AT&T would receive for reciprocal compensation, thus ensuring that AT&T's cost associated with transport of Verizon's traffic will not be recovered. AT&T Initial Brief at 72.

18 *See* AT&T Exh. 8 at 12.

19 Order, *Joint Petition of AT&T Communications of New York, Inc., TCG New York, Inc., and ACC Telecommunications Corp. Pursuant to Section 252 (b) of the Telecommunications Act of 1996 for Arbitration to establish an Interconnection Agreement with Verizon New York, Inc.*, Case 01-C-0095 *(July 30, 2001).*

20 Verizon Initial Brief at NA-12-14.

the law and are at odds with the overwhelming majority of other states that have addressed this issue.[21] Both are premised on the notion that new entrants, and not the ILEC, must shoulder all of the costs of introducing competition into the market, a premise which is just as wrong as a matter of policy as it is a matter of law.[22] Such decisions thwart, not advance, the development of competition.[23]

Issue I.1.A Can Verizon force AT&T to establish a Point of Interconnection at a particular end office, when AT&T traffic to that end office reaches a certain threshold traffic level?

I. Verizon's proposal for mandatory end office POIs violates AT&T's right to interconnect at any technically feasible point.

AT&T demonstrated that Verizon's proposal to require direct end office trunking if the traffic volumes routed through a Verizon tandem to a particular end office exceeds the CCS busy hour equivalent of one DS1 at any time and/or 200,000 combined minutes of use for a single month (Verizon's so called "DS-1 Threshold") violates AT&T's right to interconnect at any technically feasible point.[24] Verizon, on the other hand, has failed to demonstrate, with clear and convincing evidence, any specific and significant adverse consequences of continuing to route such traffic through its tandems. Without this demonstration, Verizon cannot legally refuse to interconnect at a tandem.[25]

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21 *See* Verizon Initial Brief at NA-8-12.

22 AT&T Initial Brief at 4-21.

23 *See* AT&T Exh. 3 at 2-3.

24 AT&T Initial Brief at 25-30.

25 *Id.* at 26-27.

Verizon has asserted that it must establish this threshold in order to address potential tandem exhaust and to avoid call blocking.[26] As AT&T has pointed out, however, Verizon's tandem exhaustion may be postponed, or even avoided altogether, with proper forecasting, trunk rearrangements, and/or deployment of additional tandem capacity.[27] Even if Verizon must deploy additional tandem capacity, such deployments are a routine part of Verizon's operations and do not rise to the level of a "significant adverse impact."[28] In any event, Verizon has presented no evidence that CLEC traffic is the cause of any tandem exhaust problems. Verizon's only evidence is that CLEC trunks have experienced the largest *percentage* increase in trunks over the past five years.[29] But that statistic is misleading, at best. CLECs have only 16 % of the tandem trunks, while Verizon's own traffic accounts for nearly half.[30] Given the current state of the CLEC industry, there is no evidence suggesting that the CLECs' growth rates will continue.[31] The evidence, therefore, does not support Verizon's claim that CLEC traffic is or will be the cause of any tandem exhaust, and that CLEC interconnection at the tandem thus should be limited.[32]

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26 Verizon Initial Brief NA at 26.

27 AT&T Initial Brief at 27.

28 *Id.* at 28.

29 Verizon Initial Brief NA-26.

30 AT&T Initial Brief at 27.

31 *Id.*

32 Since there are other types of traffic that traverse Verizon's tandems and since Verizon does not propose to impose the DS1 threshold uniformly, Verizon's proposal also discriminates against CLECs in violation of § 251(c)(2)(D) of the Act. *See* AT&T Initial Brief at 30. Verizon turns this discrimination argument on its head by arguing that since other carriers have agreed to abide by the DS-1 threshold, Verizon would be discriminating against AT&T if it did not impose the same restrictions on AT&T. Verizon Initial Brief at NA-29. Such an argument is absurd. If a carrier agrees to a particular term and condition, Verizon is not obligated to impose those same terms and

Verizon also asserts that its proposed DS-1 threshold is necessary to address operational performance issues relating to blocking.[33] It suggests that imposing the DS-1 threshold on CLECs will help minimize the penalties it has to pay CLECs for trunk blocking.[34] But if Verizon has a concern in this regard, it also holds the keys to the solution. It can minimize penalties by delivering its originating traffic directly to the CLEC's end office via one-way terminating trunks.[35] This is precisely what AT&T proposes by designating its switch as the default POI for Verizon's traffic. It is, thus, hard to understand why Verizon still objects to AT&T's proposal on this issue.[36]

The record also demonstrates that the DS-1 threshold is inappropriate for CLECs and would force CLECs into uneconomic interconnection.[37] However, Verizon argues that since it uses the DS-1 guideline internally, CLECs should use it as well when they interconnect to Verizon's network.[38] But there is no legal requirement that mandates that CLECs apply the same engineering guidelines as Verizon for interconnection.[39] Rather,

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conditions on all other carriers. Discriminatory interconnection relates to those terms and conditions imposed by Verizon, not to those accepted voluntarily by other carriers.

33 Verizon Initial Brief at NA-27. Verizon also suggests that the CLEC's proposal will somehow "significantly degrade its network" Verizon Initial Brief at NA-25-26. There is absolutely no evidence to support that claim.

34 Verizon Initial Brief at NA-26, 27.

35 Since the Parties have agreed to use one-way trunking, it is technically feasible, and indeed sometimes preferable, for each party to independently establish different routes for its traffic.

36 Also, there is language in the Agreement that sets forth procedures for trunk group augmentation to eliminate excessive call blocking. AT&T Exh. 4 at 48.

37 AT&T Initial Brief at 29.

38 Verizon Initial Brief NA-27.

39 Verizon suggests that by refusing to comply with its proposed DS-1 threshold, CLECs are in essence requiring the ILEC to provide superior quality interconnection to its competitors in violation of *Iowa Utilities Board II*. Verizon Initial Brief NA-28. AT&T is not asking for superior interconnection. It is simply asking for technically feasible and non-discriminatory interconnection.

the applicable requirement is technically feasible interconnection and Verizon has not demonstrated that the tandem interconnection requested by AT&T is not technically feasible. Nor has Verizon shown that such interconnection should be limited because of specific and significant adverse impacts.

Finally, Verizon is simply wrong when it contends that AT&T would never establish direct end office trunks to help Verizon alleviate tandem exhaust and avoid blocking. The record demonstrates that approximately 50 % of AT&T local interconnection trunks are *already* direct end office trunk groups.[40] Clearly, AT&T is making reasonable engineering decisions today, and it will continue to establish direct trunk groups with Verizon when it makes economic sense to do so. Verizon's proposal is thus unwarranted. As Mr. Talbott testified, cooperative trunk rearrangements and forecasting should allow Verizon to have sufficient trunking and tandem switching in place for carriers.[41]

Issue I-3 *Reciprocal Collocation* Does AT&T have an obligation to provide Verizon with collocation pursuant to Section 251(c)(6) of the Telecommunications Act of 1996?

Please see AT&T's Initial Brief at 31 for a discussion of this issue. Verizon's brief raised no new arguments, so no further response is required.

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40 AT&T Exh. 3 at 51.

41 Tr. at 1440. Verizon suggests in its brief that this statement by Mr. Talbott is inconsistent with AT&T's position. Verizon Initial Brief at NA-29. However, AT&T does not object to cooperative non-mandatory trunk rearrangements.

Issue I.4 Can Verizon force AT&T to establish a point of interconnection at a particular end office, when AT&T traffic to that end office reaches a certain threshold traffic level?

This issue is the same as Issue I.1.A. Please refer to AT&T's discussion of this issue, *supra.*

Issue III.1 *Tandem Transit Service* Does Verizon have an obligation to provide transit service to AT&T for the exchange of local traffic with other carriers, regardless of the level of traffic exchanged between AT&T and the other carriers?

Verizon claims that because it has no legal obligation to provide transit service, it can terminate the transit service it provides to CLECs once the level of traffic between two carriers reaches the DS-1 threshold. But Verizon's claims are wrong. Verizon *does* have a legal obligation to provide transit service. As discussed at Issue I.1A, there is no evidence that transit traffic imposes any significant burdens on Verizon's tandems. There is ample evidence, however, that Verizon's refusal to step up to its obligations under § 251(c)(2)(B) will impose significant financial and operational burdens on AT&T and other CLECs.[42]

Verizon is required, pursuant to § 251(c)(2)(A), to interconnect with carriers for transit and routing of telephone exchange service and exchange access. Nothing in the statute or in any Commission regulations limits this duty only to traffic between AT&T and Verizon. Verizon's arbitrary DS-1 capacity restriction would violate it duties under the Act because it would eviscerate AT&T's rights under § 251(a)(1), to interconnect

[42] Verizon Initial Brief at NA-34-37.

indirectly with the facilities and equipment of other carriers.[43] It also violates its § 251(c)(2)(B) obligations to provide interconnection at any technically feasible point.[44]

Although Verizon admits, as it must, that a CLEC can interconnect directly or indirectly with other carriers pursuant to § 251(a)(1), it asserts that since the requirement to interconnect is a CLEC *duty* and not a CLEC right, Verizon has no obligation to help the CLECs satisfy that duty.[45] Apart from the fact that Verizon's argument is illogical, it is also at odds with the law. AT&T has the *right*, under § 251(a)(1), to use either direct *or indirect* interconnection with other carriers to comply with its general interconnection duties. Since indirect interconnection may only be accomplished via Verizon's network, if Verizon refuses to allow AT&T to use its network for that purpose, the CLECs' right provided by the Act is rendered meaningless.[46]

The Commission, in its *Local Competition Order*, agrees with AT&T's position that CLECs have the right to interconnect either through direct or indirect interconnection, and that the it is the CLEC's right to choose which option it will use uses to satisfy its interconnection duty:[47]

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43 Indirect interconnection was described by the FCC in the *Local Competition Order* as interconnection to other carriers via the incumbent's network; which is precisely what transit service provides. *Local Competition Order* at ¶ 997.

44 Trunk interconnection points for a tandem switch are technically feasible points. 47 C.F.R. 51.305(a)(2)(iii).

45 Verizon Initial Brief at NA-34.

46 A statute should be interpreted to give meaning or effect to all of its provisions. *Moskal v. U.S.*, 498 U.S. 103 (1990).

47 Verizon questions whether AT&T would ever choose to directly interconnect with third party carriers since AT&T's witness did not describe a specific threshold or formula for when direct interconnection would be cost effective. Verizon Brief NA-36. However, as noted above, this is a CLECs choice to make and as explained by AT&T's witness, AT&T will make that decision when the circumstances indicate it is economical to do so. Tr. at 2190.

> [R]egarding the issue of interconnecting directly or indirectly with the facilities of other telecommunications carriers, we conclude that telecommunication carriers should be permitted to provide interconnection pursuant to section 251 (a) either directly or indirectly, based upon their most efficient technical and economic choices. The interconnection obligations under section 251(a) differ from the obligations under section 251(c). Unlike section 251(c), which applies to incumbent LECs, section 251a interconnection applies to all telecommunications carriers including those with no market power. Given the lack of market power by telecommunications carriers required to provide interconnection via section 251(a), and the clear language of the statute, we find that indirect interconnection (e.g., two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a).

Nothing in this language makes indirect interconnection an optional service provided only at the ILEC's discretion, as Verizon suggests. Indeed, it says just the opposite – that Verizon must provide indirect interconnection as part of its obligation to provide interconnection at any technically feasible point.

There is a sound basis for the Commission's decision. Adopting Verizon's position would effectively impose on CLECs duties that the Act imposes only on ILECs. Congress in § 251 created a three-tiered structure of new duties on telecommunications carriers – a core set of duties that apply to all telecommunications carriers (§251(a)), additional duties that apply only to LECs (§251(b)), and still more duties that apply only to ILECs (§251(c)). With regard to interconnection, Congress required all telecommunications carriers to interconnect "directly or indirectly", but required only *ILECs* to interconnect directly ("at any technically feasible point"). Verizon's proposal ignores the statutory construct, in that it would require CLECs to interconnect directly with other carriers once its traffic exceeded a certain threshold. However, the FCC's binding rules forbid states from imposing §251(c) duties on non-incumbent LECs. *Local*

Competition Order ¶ 1247 ("We conclude that allowing states to impose on non-incumbent LECs obligations that the 1996 Act designates as 'Additional Obligations on Incumbent Local Exchange Carriers,' distinct from obligations on all LECs, would be inconsistent with the statute").

Verizon tries to support its restrictions on tandem service by suggesting that such restrictions are necessary to address tandem exhaustion problems.[48] However, as AT&T demonstrated both in its initial brief and in the discussion of I.1.A, Verizon has not shown, as is required by the *Local Competition Order*,[49] that tandem exhaustion is creating specific and significant adverse impacts to its network.[50] More fundamentally, it has not shown that transit traffic volumes are a key source, or even a significant one, of Verizon's tandem exhaust problems. Indeed, the evidence shows that it is Verizon's own traffic that is causing exhaust, not CLEC traffic.[51]

AT&T has also demonstrated that Verizon's proposed DS-1 threshold should be rejected as expensive, highly inefficient and harmful to AT&T as well as the other

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48 Verizon Initial Brief at NA-35.

49 *Local Competition Order* at ¶ 203.

50 Although it is not the case in this proceeding, AT&T acknowledges that there may be a situation where an ILEC may be experiencing significant adverse impacts to its network as a result of excess traffic traversing a tandem or tandems. In such a case the ILEC could, consistent with the FCC's pronouncements on this issue in ¶ 203 of the *Local Competition Order*, go before the state commission and demonstrate that the adverse impacts will occur and propose a nondiscriminatory solution that was applicable to all industry sectors that used the tandem or tandems.

51 The record indicates that CLECs have about 16% of the tandem trunks, while Verizon's own traffic accounts for nearly half of the trunks. Moreover, Verizon does not know how much of the CLEC traffic is tandem transit traffic AT&T Initial Brief at 27, 36-37. *See also*, discussion of I.1.A, *infra*.

transiting carriers and their consumers.[52] At its core, Verizon's proposal is nothing more that at attempt to force costs and inefficiencies on its competitors.

Finally, Verizon asserts that since AT&T will not establish billing arrangements with third party carriers, it is violating its obligations to establish reciprocal compensation arrangements.[53] Verizon cites a response by AT&T witness Schell as evidence that AT&T is opposed to establishing reciprocal compensation arrangements with third party carriers.[54] Verizon has mischaracterized AT&T's position. Mr. Schell's testimony responded to a question about whether AT&T would establish direct interconnections with third party carriers – not billing arrangements. It is common industry practice today for parties that are indirectly interconnected to exchange transit traffic on a bill and keep basis.[55] This practice avoids the unnecessary administrative burdens of negotiating agreements.[56] However, if a third party carrier wants a different arrangement, AT&T will, consistent with its obligations, enter into another reciprocal compensation arrangement with that carrier.[57] Thus, nothing in AT&T proposal is at odds with its obligations under the Act, nor does it support Verizon's arguments on the issue.

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52 AT&T Initial Brief at 35-36; Tr. at 2295. Verizon suggests that AT&T's proposal would transfer all the costs of direct connection to Verizon. Verizon Initial Brief at NA-36. This is not true. No transfer of costs would take place. Verizon has a preexisting network connecting each of its serving wire centers within the LATA. AT&T Exh. 3 at 32. Thus, Verizon would not have to incur buildout costs, leased facilities costs or the costs associated with negotiating additional interconnection agreements. Moreover, interconnecting carriers are financially responsible for the trunks between their switches and the Verizon tandem and Verizon is paid for the provision of its transit service, so it would be made whole.

53 Verizon Initial Brief at NA 39-41.

54 *Id.*

55 AT&T Exh. 3 at 57.

56 *Id.*